



1 TARA LYN CARREON
2 CHARLES CARREON
3 2165 S. Avenida Planeta
4 Tucson, Arizona 85710
5 Tel: 520-841-0835
6 Attorneys Pro Se

7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF ARIZONA**

9 TARA LYN CARREON AND CHARLES
10 CARREON,

11 Plaintiff 1,

12 vs.

13 SEIDBERG LAW OFFICES, P.C., JOSEPH
14 LEE WHIPPLE, KENNETH W. SEIDBERG,
15 and Does 1 - 10

16 Defendants.

Case No.: CW10-182TUC DTF

FIRST AMENDED COMPLAINT FOR
VIOLATION OF FAIR DEBT
COLLECTION PRACTICES ACT AND
DECLARATORY RELIEF

JURY TRIAL DEMANDED

17 **THE PARTIES**

- 18
- 19 1. Plaintiff Tara Lyn Carreon ("Plaintiff 1") is a citizen of the United States, a resident of
20 Tucson, Arizona.
 - 21 2. Plaintiff Charles Carreon ("Plaintiff 2") is a citizen of the United States, a resident of
22 Tucson, Arizona, and the spouse of Plaintiff 1.
 - 23 3. Defendant Seidberg Law Offices, P.C. ("SLO") is a professional corporation, and a
24 resident of Phoenix, Arizona, and is a debt collector within the meaning of 15 U.S.C. §
25 1692a(6).
 - 26 4. Defendant Joseph Lee Whipple ("Whipple") is an attorney licensed to practice law in the
27 State of Arizona and is a debt collector within the meaning of 15 U.S.C. § 1692a(6).
28

- 1 5. Defendant Kenneth W. Seidberg ("Seidberg") is an attorney licensed to practice law in
- 2 the State of Arizona and is a debt collector within the meaning of 15 U.S.C. § 1692a(6).
- 3 6. SLO, Whipple and Seidberg are sometimes referred to herein jointly as the "Defendants."
- 4 7. Citibank (North Dakota) N.A., ("Citibank") is a North Dakota corporation.
- 5 8. Does 1 – 10 are additional persons responsible in some way for the harms suffered by
- 6 Plaintiff 1 and Plaintiff 2 as alleged herein, and will be named by their true names upon
- 7 discovery thereof.

8 **SUBJECT MATTER JURISDICTION**

- 9 9. This is an action under 15 U.S.C. § 1692k(d), the private right of action statute of the Fair
- 10 Debt Collection Practices Act ("FDCPA") 15 U.S.C. §§ 1692-1692p; wherefore, this
- 11 Court has jurisdiction under 28 U.S.C. § 1331.

12 **VENUE**

- 13 10. Venue is proper in this district under 28 U.S.C. § 1391(b)(1) and (2).

14 **FACTS RELEVANT TO ALL CLAIMS FOR RELIEF**

- 15 11. Plaintiff 1 and Plaintiff 2 restate and reallege each and every allegation made herein as if
- 16 set forth in full hereat.
- 17 12. Plaintiff 1 had a credit card account with Citibank that she used to make purchases for
- 18 personal, household and family purposes.
- 19 13. By letter dated November 25, 2009, Whipple, acting on his own behalf, and as the
- 20 employee of Seidberg and SLO, sent an initial communication to Plaintiff 1 by U.S. Mail
- 21 in the form of a demand for payment unsupported by any documentation. That letter
- 22 represented that Defendants would provide validation of the debt upon request.
- 23 14. Plaintiff 1 responded by letter addressed to Whipple at his office at SLO, dated December
- 24 22, 2009, and demanded validation of the debt pursuant to 15 U.S.C. § 1692g.
- 25 15. Defendants did not validate the debt.
- 26 16. Citibank has argued successfully that the rights of its cardholders and their co-obligors
- 27 and family relations are limited to those of the express cardholder contract, which *inter*
- 28 *alia*, provided for private arbitration through the National Arbitration Forum ("NAF"),

1 American Arbitration Association (“AAA”), or Judicial Arbitration and Mediation
2 Service (“JAMS”). *Eg., Hilburn v. Encore Receivable Mgmt., Inc.*, 2007 WL 1200949 at
3 *4 (D.Or. 2007)(wrongful death claim caused by collection efforts subject to arbitration).
4 Citibank, and Defendants who are acting as its agents, assignees, or otherwise standing in
5 its shoes, are therefore judicially estopped from initiating proceedings under any legal
6 theory that would abrogate Citibank’s duties under the express contract, or secure for it
7 rights not available under the express contract.

8 17. On July 14, 2009, the Minnesota Attorney General filed *State of Minnesota v. National*
9 *Arbitration Forum, Inc.*, a consumer protection suit against NAF alleging that in direct
10 contradiction of the statements of NAF and creditors like Citibank, who required debtors
11 to use its services, it is actually owned by Accretive, LLC, a family of New York hedge
12 funds that first acquired a controlling interest in NAF for \$42 Million, and then acquired
13 Mann Bracken, LLP, a New York debt collection lawfirm that had been created by
14 merging three of the nation’s largest debt collection lawfirms; then began using Mann
15 Bracken, LLP to initiate 60% of the debtor-creditor arbitrations performed by NAF.
16 Under this tainted aegis, while concealing “its affiliations with the collections industry
17 through extensive affirmative representations, material omissions, and layers of complex
18 and opaque corporate structuring,” NAF had virtually guaranteed that creditors would
19 always or nearly always prevail in consumer debt arbitrations commenced by Citibank
20 and other creditors. NAF creditor awards were cranked out in boilerplate fashion,
21 without ever conducting any actual consideration of facts or evidence, and were
22 fraudulently inflated with exorbitant legal fees and costs charged by Mann Bracken, LLP.
23 On July 24, 2009, a class action RICO lawsuit was filed in the U.S. District Court for the
24 District of Minnesota, *Sydney v. National Arbitration Forum*, Case 09-cv-01939-PAM-
25 FLN, in which Citigroup, the parent of Citibank, was sued as a co-defendant. In August
26 2009, the City Attorney for the City of San Francisco filed suit against NAF in *State of*
27 *California v. NAF*, San Francisco Superior Court Case No. 08-476569, alleging that NAF
28 achieved a near 100% record of ruling for creditors and against debtors by incentivizing

1 arbitrators to favor debt collectors, disregarding evidence favorable to consumers,
2 violating NAF's own code of procedure, and failing to arbitrate honestly and fairly as
3 promised. In September 2009, NAF was sued in a class action suit in the United States
4 District Court for the Central District of California, *Magnone et al. v. Accretive LLC, et*
5 *al.*, CV 09-6375-GAF-CWx. Thus exposed, NAF withdrew from performing consumer
6 debt arbitrations for Citibank, and with that, Citibank lost all interest in enforcing, or
7 being subject to, its arbitration clause. Although Citibank could have selected JAMS or
8 AAA to perform arbitrations, it did not want to utilize their services, because those
9 services would be far more costly, and would not produce the rigged results that NAF had
10 been providing. Mann Bracken LLP colluded with Citibank during its use of NAF,
11 purchased debt from Citibank for collections, and has devised numerous unlawful
12 schemes for Citibank's utilization, among them, the scheme pursuant to which this
13 lawsuit was filed. Mann Bracken LLP had its Maryland debt collection license revoked,
14 and ceased operations on January 1, 2010.

15 18. Nevertheless, on information and belief Plaintiff 1 and Plaintiff 2 allege that, pursuant to
16 a plan evolved by Mann Bracken LLP, and that Citibank has pursued nationally,
17 Defendants have filed lawsuits in the State of Arizona, with such frequency as to make it
18 an established unlawful collections practice that has affected large numbers of Citibank
19 cardholders.

20 19. Pursuant to the above-alleged plan, Defendants initiated a lawsuit against Plaintiff 1 and
21 Plaintiff 2 in the Superior Court of the State of Arizona in and for the County of Pima, to
22 wit, *Citibank (South Dakota), N.A. vs. Tara L. Carreon and John Doe, Spouse*, Cause No.
23 C20101500 (the "Superior Court action"). Plaintiff 2 was named as "John Doe, Spouse,"
24 and as to Plaintiff 2, Defendants alleged "the debt to be both community and separate in
25 nature, the non-debtor spouse being joined as a necessary party in accordance with
26 Arizona law...."

27 20. Pursuant to the above-alleged plan, Defendants applied for a default judgment against
28 Plaintiff 1 in the Superior Court action pursuant to an affidavit executed on March 16,

1 2010 by Whipple, in which Whipple falsely averred that "Since the service of a copy of
2 the Complaint and Summons seeking affirmative relief herein upon these parties, the
3 statutory time, exclusive of the day of service, within which these parties may plead or
4 otherwise defend has passed." In truth and in fact, Plaintiff 1 was never served with the
5 Complaint and Summons, and the time to plead or otherwise defend had never begun to
6 run. It was the intent of the Defendants to enforce any judgment against Plaintiff 1
7 equally against the property of Plaintiff 2.

8 21. By so doing Defendants enabled Citibank to breach the express contract pursuant to
9 which the relationship between Plaintiff 1 and Plaintiff 2 and Citibank arose,
10 circumventing the procedure for private arbitration, and instead alleging a single cause of
11 action for an Account Stated in the Superior Court action. Defendants certified that the
12 Superior Court action, "including punitive damages," was subject to compulsory
13 arbitration under the Uniform Rules of Procedure for arbitration, which was untrue,
14 because the express contract provided that both parties would be subject to the private
15 arbitration proceeding, and thus precluded the filing of a civil court case under Arizona
16 law by either party. The certification was further misleading, because the least
17 sophisticated consumer would naturally assume that the reference to punitive damages
18 meant that Defendants could obtain an award of punitive damages in the Superior Court
19 action; when in fact, however, they could not. The complaint initiating the Superior
20 Court action prayed for an award of attorneys fees based on the express contract;
21 however, the action is not upon the express contract, but rather on an Account Stated, for
22 which attorneys fees would not in fact be recoverable. On information and belief,
23 Plaintiff 1 and Plaintiff 2 allege that the Citibank express contracts also caps attorneys
24 fees. The complaint and certification initiating the Superior Court action were deceptive
25 in that they "cherry picked" provisions from the express contract that it wished to enforce
26 against Plaintiff 1 and Plaintiff 2, and failed to disclose provisions that it did not wish to
27 make enforceable against Citibank, concealing the true nature of the legal relationship
28 between the parties from Plaintiff 1, Plaintiff 2, and the Superior Court.

1 22. Defendants violated their duty to validate the debt, and improperly plead a common count
2 instead of the express terms of the contract in order to avail Citibank of an unlawful
3 avenue to avoid its contractual obligations and to deprive Plaintiff 1 and Plaintiff 2 of
4 legitimate, cognizable defenses assertable under the contract, including: the defense that
5 Plaintiff 1 was never given a copy of the contract and could not have manifested assent to
6 its terms; the defense of unconscionability; the defense of adhesion; the defense that its
7 assertion of unilateral authority to alter the terms of the agreement vitiated the contract
8 and rendered it illusory; the defense that the interest rates and penalties imposed were not
9 authorized under the cardholder agreement; the defense that Citibank's credit card
10 practices were unfair and deceptive and violated its bank charter and the terms of its own
11 borrowing agreements with the Federal Reserve Bank; the defense that Citibank
12 engineered defaults in payment by sending out bills with unreasonably short time periods
13 for payment in order to impose late payment penalties and raise interest rates; the defense
14 that Citibank had sold Plaintiff 1's alleged debt and no longer had standing to assert the
15 claim; the defense that Citibank had in fact already resold the Plaintiff's account in an
16 Asset-Backed Securities bundle and lacked standing to bring any claim; the defense that
17 Citibank had already recouped its losses from the Term Asset-Backed Securities Loan
18 Facility and was not entitled to a double recovery; and other defenses not yet fully known
19 but that may be alleged upon discovery thereof.

20 **FIRST CLAIM FOR RELIEF AGAINST ALL DEFENDANTS**

21 **FOR VIOLATION OF FAIR DEBT COLLECTION PRACTICES ACT**

- 22 23. Plaintiff 1 and Plaintiff 2 restate and reallege each and every allegation made herein as if
23 set forth in full hereat.
- 24 24. Whipple, Seidberg, SLO and Citibank (jointly "the Defendants") were legally required to
25 cease all communications with Plaintiff 1 and Plaintiff 2 until they had validated the debt.
- 26 25. The Defendants instead sought to obtain an unlawful default judgment for the alleged
27 debt.
28

- 1 26. The Defendants' mailing of the application for default to Plaintiff 1 was a communication
2 that violated the proscription of 15 U.S.C. § 1692g(b) and § 1692c(c) against sending
3 communications without prior validation and after notification of the request for
4 validation.
- 5 27. The Defendants' mailing of the application for default to Plaintiff 1 was a communication
6 that overshadowed and was inconsistent with the disclosure of Plaintiff 1's right to
7 dispute the debt.
- 8 28. The Defendants' mailing of the application for default was a false and misleading
9 representation in violation of 15 U.S.C. § 1692e(5) to take an action, to wit, a default
10 judgment without prior service of the summons and complaint, that cannot legally be
11 taken.
- 12 29. The Defendants' mailing of the application for default was a false and misleading
13 representation in violation of 15 U.S.C. § 1692e(9) in that it simulated lawful process of a
14 court of the State of Arizona, creating a false impression as to its authorization.
- 15 30. The Defendants' filing of the Certificate of Compulsory Arbitration was a false and
16 misleading representation in violation of 15 U.S.C. § 1692e(5) to take actions that could
17 not legally be taken, to wit, obtaining punitive damages under a common count for
18 Account Stated, obtaining attorneys fees under an Account Stated, and securing
19 compulsory judicial arbitration not authorized under the operative express contract.
- 20 31. The Defendants' filing of the Certificate of Compulsory Arbitration was a false and
21 misleading representation in violation of 15 U.S.C. § 1692e(5) to take actions that could
22 not legally be taken, to wit, suing on behalf of Citibank when Citibank had no standing,
23 having sold the debt already to a third party.
- 24 32. The Defendants' filing of the Certification of Compulsory Arbitration that Citibank was
25 entitled to compulsory arbitration against Plaintiff 1 was a false and misleading
26 representation in violation of 15 U.S.C. § 1692e(9), because it simulated lawful process
27 of a court of the State of Arizona, creating a false impression as to its authorization.
28

33. Defendants and Citibank intended to enforce any judgment against Plaintiff 1 against Plaintiff 2 as well.

34. Wherefore Plaintiff 1 and Plaintiff 2 have has been damaged in the amount of the judgment that the Defendants sought to obtain against Plaintiff 1.

SECOND CLAIM FOR RELIEF AGAINST ALL DEFENDANTS

FOR DECLARATORY RELIEF

35. Plaintiff 1 and Plaintiff 2 restate and reallege each and every allegation made herein as if set forth in full hereat.

36. An actual dispute has arisen between the Plaintiff 1 and Plaintiff 2 on the one hand, and Defendants on the other hand, in that Plaintiff 1 and Plaintiff 2 contend that the Defendants, acting on behalf of Citibank, have attempted to procure against a default judgment to enforce against both Plaintiffs that was in legal fact void because procured by intrinsic fraud and in violation of the Fourteenth Amendment right to due process in the form of notice and an opportunity to be heard before being deprived of property; whereas, the Defendants contend that the Superior Court action was lawful and may be the basis for an enforceable judgment.

37. Wherefore, Plaintiff 1 and Plaintiff 2 seek an order barring further prosecution of the Superior Court action, and a declaration that any judgment against Plaintiff 1 is void and unenforceable, and may not be made the basis of any lien on real or personal property, or in any other fashion provide the basis of any legal obligation enforceable against Plaintiff 1 or Plaintiff 2.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff 1 and Plaintiff 2 pray for judgment against defendants as follows:

ON THE FIRST CLAIM FOR RELIEF:

1. For economic damages according to proof;
2. For statutory damages of \$1,000;
3. For non-economic damages according to proof;
4. For attorneys fees;

1 5. For punitive damages;

2 ON THE SECOND CLAIM FOR RELIEF:

3 6. For an injunction barring further prosecution of the Superior Court action or the issuance
4 of any postjudgment enforcement orders based thereon;

5 7. For a declaration declaring void any judgment that the Defendants have obtained against
6 Plaintiff 1;

7 ON ALL CLAIMS FOR RELIEF, for judgment and such other and further relief as the Court
8 deems just.

9 Dated: March 31, 2010

TARA LYN CARREON



10
11 TARA LYN CARREON
Attorney Pro Se

12 Dated: March 31, 2010

CHARLES CARREON

13
14 
15 CHARLES CARREON
Attorney Pro Se

JURY DEMAND

Pursuant to F.R.Civ.P. 38(b), Plaintiff 1 demands a jury trial.

Dated: March 31, 2010

TARA LYN CARREON



TARA LYN CARREON

Attorney Pro Se

Dated: March 31, 2010

CHARLES CARREON



CHARLES CARREON

Attorney Pro Se